IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.2912 of 2007

Mr.S.Jogindersingh Darshah Singh Saigal — Petitioner
Vs.
Smt. Rekha M. Bhambhani & anr. — Respondents

Mr.V.G.Mehta for petitioner.
Mr.P.S.Dani for respondents.

CORAM: B.H.MARLAPALLE, J.

April 27, 2007.

P.C.

. Heard Mr.Mehta, the learned counsel for the petitioner who claims to be a tenant. He filed RAD Suit No.379 of 2006 for a declaration of his being a tenant by the Small Causes Court at Mumbai. In the said suit he also filed an application at Exhibit 6 praying for injunction against the landlord. The service of summons was effected on the landlord on 25th April 2006 and the landlord caused appearance on 27th April 2006 though an advocate and subsequently the said suit was adjourned on six dates i.e. 25th June 2006, 14th July 2006, 3rd August 2006, 22nd August 2006 and lastly 7th October 2006. In fact on the last date i.e. on 7/10/2006 the defendant-landlord made an application for condonation of delay in filing the written statement

and prayed for taking the same on record. This application has been marked as Exhibit 23 and has been allowed by the learned Judge of the Small Causes Court by the impugned order dated 21st February 2007.

. The learned counsel for the petitioner submitted that the impugned order is grossly erroneous in asmuch as on five different dates extending the period beyond 120 days, the defendant-landlord did not file any written statement and there was no justification for condoning the delay when the written statement was not filed within the period of 30+90 days.

. It is seen from the records that on 27/4/2006 the landlord appeared and filed an application at Exhibit 8 praying for dismissal of the suit on the ground of suppression of vital documents and also prayed for directions against the plaintiff-tenant to pay a sum of Rs.3,31,400/- being arrears upto 30th April 2006. In addition the landlord also filed reply to the application at Exhibit 6 filed by the plaintiff for an order of injunction and the said application was decided on 14/9/2006. After the said application was dismissed on 14/9/2006 the next date

was 7th October 2006 and the defendant - landlord present the application at Exhibit 23 along with the written statement. The trial Court noted that the conduct of the defendant-landlord cannot be termed as casual in asmuch as within two days of service of summons the landlord caused his appearance through the advocate, reply to the application at Exhibit 6 was filed and on every date noted hereinabove the parties were present before the Court.

. The learned counsel for the plaintiff relied upon an order of this Court (Goa Bench) in Writ Petition No.391 of 2003 in the case of Pandurang Dessai v. Beraldin Tavares **[2006 (6) AIR Bom R 604]** and submitted that the mandatory period of 30+90 days could not be extended by the trial Court for filing the written statement.

. These contentions are no more *res integra* in view of the judgment of the Apex Court in the case of Salem Advocate Bar Association v. Union of India **[(2005) 6 SCC 344]** and para 20 of the said judgment reads as under:

"The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine

> whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

. Having regards to the reasons set out by the trial Court in support of the impugned order, it cannot be said that the said order is either perverse or grossly erroneous so as to call for interference in a petition under Article 227 of the Constitution.

Hence the petition is rejected summarily.

(B.H.MARL